

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

APRIL 19, 2000

IN RE:

**APPLICATION OF MEMPHIS NETWORKX, L.L.C.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATION SERVICES AND JOINT
PETITION OF MEMPHIS LIGHT GAS & WATER
DIVISION, A DIVISION OF THE CITY OF MEMPHIS,
TENNESSEE ("MLGW") AND A&L NETWORKS-
TENNESSEE, L.L.C. ("A&L") FOR APPROVAL OF
AGREEMENT BETWEEN MLGW AND A&L REGARDING
JOINT OWNERSHIP OF MEMPHIS NETWORKX, LLC.**

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) **DOCKET NO.**
) **99-00909**
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**ORDER DENYING MOTION TO ALLOW ADDITIONAL DISCOVERY
AND TO AMEND PROCEDURAL SCHEDULE**

This matter is before the Pre-Hearing Officer upon the motion filed by Time Warner Communications of the Mid-South ("Time Warner") on April 14, 2000, seeking an order to allow additional discovery and to amend the procedural schedule in this matter ("Time Warner's Motion"). Time Warner also filed exhibits to its Motion on April 14, 2000. A response to Time Warner's Motion was filed by Memphis Networkx, LLC, Memphis Light Gas & Water Division and A&L Networks-Tennessee, LLC ("Applicant and Joint Petitioners") on April 17, 2000. After having reviewed Time Warner's Motion, the Response of the Applicant and Joint Petitioners and the record in this matter, the Pre-Hearing Officer denies Time Warner's Motion based on the following findings:

1. Pursuant to the original procedural schedule, as approved by the Tennessee Regulatory Authority (“Authority”) at the March 14, 2000 Authority Conference, this matter was originally set for hearing for March 29 and 30, 2000. After several Status Conferences, the hearing was rescheduled for April 13 and 14, 2000 upon a determination by the Pre-Hearing Officer that the case was not in a posture to proceed to hearing on the original dates.

2. On March 17, 2000, after receiving responses of the Applicant and Joint Petitioners to discovery requests, Time Warner filed a request to take the depositions of five persons: John McCullough, Wade Stinson, Larry Thompson, Joel Halverson and Alex Lowe. On March 21, 2000, the Applicant and Joint Petitioners responded in opposition to Time Warner’s request. On March 23, 2000, the Applicant and Joint Petitioners pre-filed rebuttal testimony from John McCullough and Wade Stinson, thereby making those witnesses available for cross-examination by Time Warner, at the hearing. During a Status Conference held on March 24, 2000, the Intervenor agreed to reduce the request for depositions from five to two witnesses: Larry Thompson and Alex Lowe. The Applicant and Joint Petitioners maintained their opposition to the taking of depositions and the cross-examination of these two witnesses.

On March 27, 2000, at the direction of the Pre-Hearing Officer, the Intervenor filed support for their request to take the depositions of these two witnesses. After reviewing these filings and hearing the response of the Applicant and Joint Petitioners, the Pre-Hearing Officer ruled at a Status Conference held on March 29, 2000 that both Mr. Thompson and Mr. Lowe should give deposition testimony which could be used by the Intervenor, if desired, during the hearing. The depositions were scheduled to take place on April 6, 2000,

but rather than proceed with the depositions, the parties agreed on April 6 that the depositions would not go forward and that the witnesses would instead give live testimony at the hearing.

3. In the opinion of the Pre-Hearing Officer, the addition of live testimony by two witnesses expanded the time required for the hearing and on Friday, April 7, 2000, he notified the parties in writing of the need to change the hearing dates to allow more consecutive days for the hearing. An order reflecting that decision was issued by the Pre-Hearing Officer on Monday, April 10, 2000.

4. The Applicant and Joint Petitioners opposed the Pre-Hearing Officer's letter and Order during the Authority Conference held on April 11, 2000. During the discussions relative to resetting the hearing, the parties were asked by the Directors whether the matter was ready to be heard. None of the parties responded that additional time was required for preparation or that the matter was not ready to be heard. The Authority affirmed the Pre-Hearing Officer's order and moved the hearing from April 13 and 14, 2000 to the first week in May, 2000, expressly to provide additional time for the conduct of the hearing.

5. On April 14, 2000, Time Warner filed its Motion, together with exhibits, seeking permission to amend the procedural schedule to conduct additional discovery depositions. Time Warner's Motion does not seek the depositions of any specific persons. Further, the exhibits filed in support of Time Warner's Motion reveal that the discovery sought to be obtained concerns allegations of certain conduct by employees of the Joint Petitioners in the development of the telecommunications, more specifically in their dealings with the Memphis City Council regarding the funding and operations of that entity. Some of the information in the exhibits filed by Time Warner had already been provided to the Pre-

Hearing Officer in support of Time Warner's request to take the depositions of Alex Lowe and Larry Thompson.

6. It is the opinion of the Pre-Hearing Officer that in moving the hearing date to allow more time for the hearing, the Directors of the Authority did not intend to provide a period for additional new discovery in advance of the new hearing dates. Further, the Pre-Hearing Officer determines that to the extent that Time Warner desires to bring to the Authority's attention the information revealed in its Motion and in exhibits in support thereof, that information can be elicited at the time of the hearing from witnesses who are already scheduled to testify.


IT IS THEREFORE ORDERED THAT

1. Time Warner's Motion For Order to Allow Additional Discovery and to Amend the Procedural Schedule is hereby denied.

2. Any party aggrieved by the decision of the Pre-Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority.


RICHARD COLLIER ACTING AS
PRE-HEARING OFFICER

ATTEST:


K. David Waddell, Executive Secretary